



STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

January 16, 2015

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Public Utilities Commission Governing White Pages Directory Publication and Distribution; Revisor's ID Number R-4218

Dear Librarian:

The Minnesota Public Utilities Commission intends to adopt rules Governing White Pages Directory Publication and Distribution. We plan to publish a Dual Notice of Intent to Adopt Rules in the January 20, 2015, *State Register*.

The Commission has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Commission is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-2223.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Christopher Moseng", with a long, sweeping underline.

Christopher Moseng
Staff Attorney

Enclosure: Statement of Need and Reasonableness

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments to Rules
Concerning White Pages Directory Publication
and Distribution

ISSUE DATE: January 16, 2015

DOCKET NO. P-999/R-13-459

STATEMENT OF NEED AND
REASONABLENESS

**I.
INTRODUCTION**

The Minnesota Public Utilities Commission proposes to amend its rules concerning white pages directory publication and distribution, which are located in Minnesota Rules parts 7810.2900, 7811.0600, and 7812.0600. In 2012, 2013, and 2014, parties have requested that the Commission vary these rules, in part because the economic and environmental burden of requiring printed directories may outweigh the directories' usefulness.

The proposed amendments update the rules to allow Local Service Providers to determine whether they will offer electronic directories to satisfy the rules' directory requirement, while ensuring that individual customers may continue to receive printed directories if that is their preference.

**II.
THIS MATERIAL IS AVAILABLE IN ALTERNATIVE FORMATS**

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call the Public Utilities Commission through their preferred Telecommunications Relay Service.

**III.
STATUTORY AUTHORITY**

Minnesota Statutes, sections 237.10 and 237.16 authorize the Commission to adopt rules pertaining to the conduct of intrastate telephone business.

**IV.
STATEMENT OF NEED**

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14, subd. 2, and 14.23.

The proposed rules are necessary to update the Commission's existing rules related to telephone directories. Commission rules currently require delivery of a printed white pages directory to each customer of a local service provider, except where an offer for a directory is made and explicitly refused by the customer.¹ Recently, parties have requested that the Commission vary this rule, in part because the economic and environmental burden of requiring printed directories may outweigh the directories' usefulness.

**V.
STATEMENT OF REASONABLENESS**

The Minnesota Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problems they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied on is rationally related to the approach the Commission chose to adopt. Minn. Stat. §§ 14.14., subd. 2, and 14.23. Minn. R. 1400.2070, subp. 1.

A. The process used to develop the rules facilitated informed decision-making and was the most efficient method for establishing reasonable rules.

The Commission notified all persons who could be identified as potentially interested in or affected by the rules. After issuing a Request for Comments that resulted in recommendations made by stakeholders, the Commission reviewed the recommendations, revised the draft, and sought additional comments. The Commission incorporated several changes that were reasonable, were responsive to the needs of diverse stakeholders, and that carried out the policy objectives that the Commission set forth at the outset of the rulemaking.

B. The rules' approach to implementing policy goals is reasonable.

The Commission has determined that the proposed rules are the most reasonable way to update the rules to accommodate electronic publication of directories. The reasonableness of each specific provision is addressed below.

¹ Minn. R. 7810.2900, 7811.0600, and 7812.0600.

VI.
ANALYSIS OF INDIVIDUAL RULES

7810.0100 DEFINITIONS.

Subp. 11a. Complete Directory.

“Complete directory” means a directory that includes the information compiled under part 7810.2900, subpart 1, whether printed, electronically published, or some combination thereof. For example, a complete directory may comprise a printed subset of exchanges in a local calling area relevant to customers in a particular geographic area or community of interest and publication of the remainder of the local calling area either electronically or in separate printed volumes.

This definition is necessary and reasonable to clarify the use of the term “complete directory” in this rule chapter. The term is used to specify the directory content requirements while permitting the requirements to be satisfied with printed directories, electronic directories, or both in combination.

Subp. 26a. Local Service Provider.

“Local Service Provider” or “LSP” means a telephone company or telecommunications carrier providing local service in Minnesota pursuant to a certificate of authority granted by the commission. Local service provider includes both local exchange carriers and competitive local exchange carriers.

This definition is necessary and reasonable to clarify the use of the term “Local Service Provider” in part 7810. The term is defined in parts 7811.0100 and 7812.0100, and used in parts 7811.0600 and 7812.0600 to identify the regulated parties to whom the directory requirement applies. Because other proposed amendments use “Local Service Provider” in part 7810, the definition is proposed to be repeated in 7810.0100 for clarity.

7810.2900 FORMAT, CONTENT AND DISTRIBUTION OF DIRECTORIES.

~~Telephone directories shall be regularly published, listing the name, address when practical, and telephone number of all customers, except public telephones and numbers unlisted at customer's request. The name of the telephone utility, the area included in the directory, the year and month of issue, shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages. The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and location of telephone company business offices as may be appropriate to the area served by the directory. Upon issuance, a copy of each directory shall be~~

~~distributed to all customers served by that directory and a copy of each directory shall be furnished to the commission, upon request.~~

It is necessary and reasonable to subdivide this existing rule part into subparts that govern the format, content, and distribution of electronic and printed directories. Because the format and distribution of electronic directories is different from the format and distribution of printed directories, the proposed requirements governing the two formats reasonably and necessarily reflect those differences. The substance of the portion proposed to be struck is largely restated in the proposed new subparts immediately below, as is appropriate for electronic or printed directories.

Subpart 1. Basic Requirements.

Telephone directories shall be regularly compiled and shall contain each customer's name, telephone number, and, if practical, address, except public telephones and numbers unlisted at the customer's request. Upon issuance, a local service provider shall provide to all customers served by that directory a complete directory consistent with the customer option provisions of Rule 7810.2950. Upon commission request, a local service provider shall furnish to the commission a copy of each directory issued, whether printed or electronic.

This subpart is necessary and reasonable to state the basic requirements for compilation of directory content, whether distributed in printed or electronic form. Distribution of a complete directory can be accomplished with printed directories, electronic directories, or both in combination, as is consistent with the other proposed rule provisions.

Subp. 2. Printed Directories.

Printed directories shall:

- A. display on the front cover the name of the local service provider, the area included in the directory, and the year and month of issue;
- B. display in the front portion of the directory information pertaining to emergency calls, including information for police and fire departments; and
- C. contain instructions, appropriate to the area served by the directory, concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of local service provider business offices.

This subpart is necessary and reasonable to state the basic requirements for printed directories. The requirements state the requirements that currently exist under part 7810.2900, with slight modification to include the requirement that directories contain instructions for calling local, state, and federal government offices.

Subp. 3. Electronically Published Directories.

Any electronic directory to which a Local Service Provider directs its customers shall comply with the provisions of parts 7810.2900, subpart 1 and 7810.2950. Electronically published directories shall:

- A. display the name of the local service provider;
- B. display information pertaining to emergency calls, including information for police and fire departments;
- C. display instructions concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of local service provider business offices; and
- D. be prominently displayed on, and accessible from, the company's website.

This subpart is necessary and reasonable to state the basic requirements for electronically published directories. The requirements state the requirements that currently exist under part 7810.2900, with slight modification to accommodate the differences between printed and electronic directories, and to include the requirement that directories contain instructions for calling local, state, and federal government offices.

7810.2950 DIRECTORIES: CUSTOMER OPTION.

A local service provider may publish printed or electronic directories, or some combination thereof. A local service provider that does not make an electronic directory available shall distribute a printed directory to each customer, except where an offer is made and explicitly refused by the customer. A local service provider that publishes an electronic directory shall, at least as often as print directories are issued, provide notice to customers of the availability of an electronic directory, instructions on how the electronic directory may be accessed, notice that a printed directory is available upon request, and instructions on how to make the request for a printed directory. A local service provider that publishes an electronic directory must deliver a printed directory if requested by the customer. A local service provider shall not:

- A. require customers to divulge any personally identifiable information other than their name and delivery address in order to request a complete directory that is printed or contained on a portable physical electronic medium;
- B. require users to create an account, log in, or otherwise provide any personally identifiable information in order to access an electronic directory; and

- C. obtain, use, or retain any personally identifiable information from customer use of or request for a directory, except for the limited purpose of providing a directory in the format requested; and
- D. market services, including through its affiliate or publisher, other than directories to such requesting customers.

This provision is necessary and reasonable to ensure that customer choice is reasonably reflected in how local service providers fulfill the directory requirement. The proposed rule part allows Local Service Providers to determine whether they will offer electronic directories in lieu of printed directories, but ensures that individual customers may elect to receive printed directories if that is their preference. The proposed rule part also allows Local Service Providers *not* to publish electronic directories and to continue to deliver printed directories consistent with the status quo. Finally, in cases where an electronic directory is the Local Service Provider's default option, the proposed rule part requires notice to customers to ensure they know how to access or receive their preferred directory format.

The four prohibited activities in subparts A through D are necessary and reasonable to prevent Local Service Providers from using information or opportunities obtained in the course of fulfilling the directory requirement for purposes other than satisfying their obligation.

7811.0600 BASIC LOCAL SERVICE REQUIREMENTS.

Subpart 1. Required services.

- F. ~~one white pages complete directory per year for each local calling area, which may include more than one local calling area, consistent with the customer option provisions of part 7810.2950 and, upon a customer request and in the customer's preferred format among the formats offered by the local service provider, one copy of any other directory within the local calling area or except where an offer is made and explicitly refused by the customer;~~

The amendments to this subpart are necessary and reasonable to use the term "complete directory," for consistency with the other proposed amendments, and to strike the offer-refusal language because the language is relocated to rule part 7810.2950. The revised language recognizes existing industry practice to provide directories that may contain a subset of a local calling area but does not change the basic obligation to provide directories for the local calling area.

7812.0600 BASIC SERVICE REQUIREMENTS.

Subpart 1. Required services.

- F. ~~one white pages complete directory per year for each local calling area, which may include more than one local calling area, consistent with the customer option provisions of part 7810.2950 and, upon a customer request and in the customer's preferred format among the formats offered by the local service provider, one copy of any other directory within the local calling area or except where an offer is made and explicitly refused by the customer;~~

The amendments to this subpart are necessary and reasonable to use the term “complete directory,” for consistency with the other proposed amendments, and to strike the offer-refusal language because the language is relocated to rule part 7810.2950. The revised language recognizes existing industry practice to provide directories that may contain a subset of a local calling area but does not change the basic obligation to provide a directory for the local calling area.

VII. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

- A. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. Minn. Stat. § 14.131 (1).**

The following persons will probably be affected by the proposed rules:

- All Minnesota telephone companies or telecommunications carriers providing local service in Minnesota under a certificate of authority granted by the Commission.
- The customers of Minnesota telephone companies or telecommunications carriers providing local service in Minnesota under a certificate of authority granted by the Commission.

The following persons will probably bear the costs of the proposed rules:

- All Minnesota telephone companies or telecommunications carriers providing local service in Minnesota under a certificate of authority granted by the Commission.
- The customers of Minnesota telephone companies or telecommunications carriers providing local service in Minnesota under a certificate of authority granted by the Commission.

The following persons will probably benefit from the proposed rules:

- Minnesota telephone companies or telecommunications carriers providing local service in Minnesota under a certificate of authority granted by the Commission, and their customers, will benefit from greater flexibility in the permissible methods of providing telephone directories.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues. Minn. Stat. § 14.131 (2).

In relation to the existing rules, the probable costs to the agency to implement and enforce the proposed amendments are negligible.

In relation to the existing rules, the probable costs to any other agency to implement and enforce the proposed amendments are negligible.

The Commission anticipates no effect on state revenues.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. Minn. Stat. § 14.131 (3).

The purpose of the proposed rules is to update the requirement that local service providers deliver telephone directories by reasonably allowing publication of electronic directories to satisfy the directory requirement.

The Commission has identified no less costly or less intrusive methods to achieve the purpose of the proposed amendments. The Commission reaches this conclusion after thorough consideration of the comments received in the course of this rulemaking, in light of the Commission's need to adopt rules pertaining to the conduct of intrastate telephone business. Only by amending the Commission's rules can the Commission update the telephone directory requirement to recognize electronic telephone directories.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule. Minn. Stat. § 14.131 (4).

The purpose of the proposed rules is to update the requirement that local service providers deliver telephone directories by reasonably allowing publication of electronic directories to satisfy the directory requirement.

The Commission considered and rejected keeping the existing directory rules without amendment. The existing rules were last revised before the internet was a viable and often preferred means of distributing directory information. Since that time, experience and comments in response to this rulemaking have informed the Commission's understanding of the costs and benefits of printed and electronic directories. The existing rules therefore no longer serve the needs of the public. In order to best balance the diverse interests of local service providers, customers, and the public in the telephone directory requirement, rule amendments are necessary.

The Commission considered and rejected eliminating the directory requirement. The Commission still believes that the provision of telephone directories is a reasonable and necessary basic service requirement for local telephone service. Eliminating the requirement to distribute directories could deprive customers of something the Commission has determined to be a basic aspect of telephone service.

The Commission considered and rejected requiring electronic telephone directories. Not all local service providers wish to provide electronic directories, and not all customers prefer to use electronic directories. The Commission concluded that making electronic directories optional but not mandatory was the most reasonable way to balance the diverse interests of local service providers, customers, and the public.

The Commission considered and rejected prohibiting the publication of printed directories and allowing only electronic directories. The Commission concluded that circumstances are not appropriate for such a dramatic shift. Some local service providers still wish to distribute printed directories, and many customers would be unable to access an electronic directory. The Commission concluded that making electronic directories optional but not mandatory was the most reasonable way to balance the diverse interests of local service providers, customers, and the public.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals. Minn. Stat. § 14.131 (5).

In relation to the existing rules, the probable costs to comply with the proposed amendments are negligible to significantly lower than complying with the existing rule. The rule effectively maintains the status quo for local service providers, but provides them an additional option for satisfying the requirement that is likely to be less costly than the existing option.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals. Minn. Stat. § 14.131 (6).

In the absence of the proposed amendments, the Commission's rules would continue to require printed directories and would not address format or content requirements for electronic directories. The costs of these consequences would be borne by Minnesota local service providers, their customers, and the greater public. They would include the economic and environmental costs of unnecessary printed directory publication, which include substantial CO₂ emissions and natural resource consumption in both the production and disposal of unwanted printed material.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. Minn. Stat. § 14.131 (7).

No existing federal regulations concern the requirement to provide telephone directories as a basic aspect of telephone service. Accordingly, there are no differences to assess.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time. Minn. Stat. § 14.131 (8).

No other federal or state regulations are related to the specific purpose to require distribution of directories as a basic aspect of telephone service. Therefore, this consideration is not applicable for this rule.

VIII.

CONSIDERATION OF PERFORMANCE BASED REGULATORY SYSTEMS

Minn. Stat. §§ 14.002 and 14.131 require the Commission to describe how, in developing the rules, it considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The Commission was guided by performance-based regulatory principles as it developed these proposed amendments. The proposed amendments extend duties and burdens no further than is necessary to fulfill the intended policy objective of ensuring the quality of basic local telephone service. The proposed amendments maximize flexibility for regulated entities to provide directories in a format of their choosing in balance with customers’ interest in receiving directories they will find useful and the public’s interest in reducing unnecessary waste.

IX.

COST OF RULE COMPLIANCE

As required by Minnesota Statutes, section 14.131, the Commission will consult with Minnesota Management and Budget (MMB). The Commission will do this by sending MMB copies of the documents that the Commission sends to the Governor’s Office for review and approval on the same day they are sent to the Governor’s office. The Commission will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Commission will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to the Office of Administrative Hearings (OAH).

For some proposed rules, Minnesota Statutes, section 14.127, requires the agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The proposed rules are exempt from this requirement, however, because the requirement does not apply to rules proposed by the Public Utilities Commission. Minnesota Statutes, section 14.127, subdivision 4(d).

X. EFFECTS ON LOCAL GOVERNMENTS

Minnesota Statutes, section 14.128 requires the agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval.

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not based on this Statement of Need and Reasonableness, the review conducted by the Commissioner of Management and Budget, and comments received on possible proposed rule drafts.

The proposed rules do not impose specific requirements, administrative burdens, or costs on local governments. Therefore the Commission has determined that local governments will not be required to adopt or amend ordinances or other regulations to comply with the proposed rules. Furthermore, the Commission consulted with the Commissioner of Management and Budget, as required by Minnesota Statutes, section 14.131. The Commissioner of Management and Budget determined that the proposed changes will not affect or impose significant costs on local units of government.

Additionally, no comments from stakeholders indicated that local governments would be affected by, or be required to adopt or amend local regulations, to comply with the proposed rules.

XI. LIST OF WITNESSES

If these rules go to a public hearing, the Commission does not plan to rely on any non-agency witnesses at any rule hearing.

XII. LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Commission anticipates that it will enter the following exhibits into the hearing record:

1. Request for Comments (38 S.R. 502, October 14, 2013).
2. Comments in response to Request for Comments submitted by: Minnesota Pollution Control Agency, Product Stewardship Institute, Pinnacle Publishing, LLC, CenturyLink, Dex Media East, Inc. (Dex), Citizens Telecommunications Company of

Minnesota, LLC, and Frontier Communications of Minnesota, Inc., Minnesota Department of Commerce, The Minnesota Cable Communications Association, and the Minnesota Telecom Alliance.

3. Comments in response to Notice of Comment Period submitted by: CenturyLink, Dex Media East, Inc. (Dex), Citizens Telecommunications Company of Minnesota, LLC, and Frontier Communications of Minnesota, Inc., Minnesota Department of Commerce, The Minnesota Cable Communications Association, and the Minnesota Telecom Alliance.

XII. ADDITIONAL NOTICE PLAN

To ensure that the public has sufficient notice to participate in a proposed rulemaking, the Administrative Procedure Act requires agencies to take certain steps to publicize their rulemakings. In addition, Minn. Stat. § 14.14, subd. 1a, requires agencies to make unspecified additional efforts to notify persons who might be affected by proposed rules, and § 14.131 requires agencies to describe these efforts in their Statement of Need and Reasonableness.

The Commission plans to publicize its proposed rule changes by:

- Publishing the Notice of Intent to Adopt Rules, and the text of proposed rule changes, in the State Register.
- Mailing a copy of the Notice of Intent to Adopt Rules to everyone who has requested to receive it under Minn. Stat. § 14.14, subd. 1a.
- Giving notice to the Legislature as required by Minn. Stat. § 14.116.
- Publishing the Notice of Intent to Adopt Rules and this Statement of Need and Reasonableness, including the text of the proposed rules, on the Commission's website at <http://www.mn.gov/puc/aboutus/rulemaking-project/>.
- Mailing the Notice of Intent to Adopt Rules to the Commission's existing general and telecom rulemaking lists, the Department of Commerce's lists for Large Local Exchange Carriers, Small Local Exchange Carriers, Competitive Local Exchange Carriers, and to the service lists for Commission docket numbers 12-140, 12-1236, 14-775, and 13-459.
- Issuing a press release to all newspapers of general circulation throughout the state.

The Commission's Notice Plan includes giving the notice required by statute. The Commission will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Commission's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The Commission will also give notice to the Legislature as required under Minnesota Statutes, section 14.116.

The Commission's Notice Plan did not include notifying the Commissioner of Agriculture under Minnesota Statutes, section 14.111 because the rules do not affect farming operations.

**XIII.
CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

Jan 16, 2015
Date

Daniel P. Wolf
Daniel P. Wolf
Executive Secretary